

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Zajakowski Uhl	Team: Squad #10	CCRB Case #: 201908487	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/18/2019 2:32 AM, Friday, 09/18/2020 9:30 AM	Location of Incident: rear of 31-46 21st Street and the 114th Precinct stationhouse.	Precinct: 114	18 Mo. SOL 3/18/2021	EO SOL 11/2/2021	
Date/Time CV Reported Wed, 09/18/2019 11:46 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 09/25/2019 11:06 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Edward Britch	03990	951559	114 PCT
2. POM Brian Hughes	15503	956746	114 PCT
3. LT Thomas Jacobs	00000	925507	114 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Colin Dyer	02116	943203	114 PCT
2. POM Vincent Lahara	07861	956819	114 PCT
3. POM Eric Agueros	00471	961597	114 PCT
4. POM Robert Randall	01325	965445	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Edward Britch	Force: At 31-46 21st Street in Queens, Police Officer Edward Britch used physical force against § 87(2)(b)	
B.POM Brian Hughes	Force: At 31-46 21st Street in Queens, Police Officer Brian Hughes used physical force against § 87(2)(b)	
C.LT Thomas Jacobs	Discourtesy: At the 114th Precinct stationhouse in Queens, Lieutenant Thomas Jacobs spoke discourteously to § 87(2)(b)	
D.LT Thomas Jacobs	Abuse: At the 114th Precinct stationhouse in Queens, Lieutenant Thomas Jacobs refused to provide his name to § 87(2)(b)	

Case Summary

On September 18, 2019, Lieutenant Jacobs from the 114th Precinct reported the following to IAB, where it received Original Log #2019-34892. It was referred to the CCRB, where it was received on September 25, 2019.

On September 18, 2019, around 2:30 a.m., § 87(2)(b) walked through the drive thru at the McDonald's on 31-46 21st Street in Queens. § 87(2)(b) was informed by the staff that he would not be served walking through the drive thru, but he did not leave. The staff then called the police, and PO Edward Britch and PO Brian Hughes, of the 114th Precinct, arrived at the McDonald's about five minutes later. They approached § 87(2)(b) and told him to get out of the drive through line. § 87(2)(b) refused and argued with the officers, who grabbed him to move him aside. § 87(2)(b) resisted, and PO Hughes and PO Britch brought him face down to the ground (**Allegation A: Force: Physical Force**, § 87(2)(g) **Allegation B: Force: Physical Force**, § 87(2)(g) PO Hughes and PO Britch then brought § 87(2)(b) to their vehicle and drove him to the 114th Precinct Stationhouse. As they walked him toward the entrance, § 87(2)(b) collapsed and passed out on the ramp outside the stationhouse entrance. The officers called an ambulance for § 87(2)(b). When the ambulance arrived, PO Hughes went with § 87(2)(b) to § 87(2)(b). Around 9:30 a.m., PO Hughes brought § 87(2)(b) back to the 114th Stationhouse and put him in a holding cell. Lieutenant Jacobs, the ICO officer for the 114th Precinct, came to check on him in the cell and interviewed him regarding the force used by PO Britch and PO Hughes. § 87(2)(b) explained that he wanted further medical attention because he has a history of concussions, and allegedly Lieutenant Jacobs allegedly responded, "Shut the fuck up and just get booked." (**Allegation C: Discourtesy: Word**, § 87(2)(g) At approximately 10:00 a.m., an ambulance came to the stationhouse to take § 87(2)(b) back to § 87(2)(b) to look at his injuries. As he was leaving the stationhouse to get into the ambulance, he asked for Lieutenant Jacob's name and Lieutenant Jacobs allegedly did not respond. (**Allegation D: Abuse of Authority: Refusal to Provide Name**, § 87(2)(g) The second time he went to the hospital, PO Britch accompanied § 87(2)(b). After § 87(2)(b) was examined for the second time, he was brought back to the 114th Precinct to be booked for § 87(2)(b).

The investigation obtained BWC from PO Edward Britch, PO Brian Hughes, PO Vincent Lahara, Sgt. Colin Dyer, PO Robert Randall, and PO Eric Agueros (**Board Review 1, 2, 3, 4, 5, and 6**), as well as stationhouse footage of § 87(2)(b) in the holding cell of the 114th Precinct (**Board Review 7 and 8**). The investigation summarized these videos upon receipt (**Board Review 9 and 10**). The investigation also obtained security footage of the McDonald's drive thru, which captured § 87(2)(b) being escorted to a police vehicle, but captured no FADO allegations (**Board Review 23, 24, and 25**).

Findings and Recommendations

Allegation (A) Force: At 31-46 21st Street in Queens, Police Officer Edward Britch used physical force against § 87(2)(b)

Allegation (B) Force: At 31-46 21st Street in Queens, Police Officer Brian Hughes used physical force against § 87(2)(b)

On January 10, 2020, § 87(2)(b) gave a statement at the offices of § 87(2)(b). (**Board Review 11**)

§ 87(2)(b) stated prior to 8:00 p.m. the night before, he had consumed two vodka soda drinks

and one whiskey drink. At approximately 1:00 a.m., he walked through the McDonald's drive thru because he wanted food and the restaurant section was closed. He ordered food at the first window and then walked ahead to the second window where customers received the food they ordered. No employees had told him to leave.

§ 87(2)(b) was standing by the second drive-thru window when PO Britch and PO Hughes approached him. § 87(2)(b) told the officers he was waiting for his food. The officers then told him that he could not be there and pointed to a sign on the drive-thru window that said "no walk-ins." § 87(2)(b) told the officers he already paid and would leave as soon as his food came out. PO Britch then came up behind § 87(2)(b) grabbed both of his arms and in one motion, he brought § 87(2)(b) to the ground. § 87(2)(b) had no memory of what happened immediately after that. The next thing he remembered was sitting on the pavement outside of the McDonald's with handcuffs on his wrists and ankle cuffs on his legs. PO Britch and PO Hughes told him he had to go to the hospital because he was extremely intoxicated and he was taken to the hospital in an ambulance. § 87(2)(b) started to feel light-headed because he had hit his head and he thought he might have been concussed. He was also bleeding from his shoulder.

PO Britch stated (**Board Review 12**) that he and PO Hughes received a radio run that said employees from the McDonald's reported an intoxicated man who would not leave the location. When they arrived, § 87(2)(b) was standing in front of the drive thru window obstructing the traffic of other vehicles who were waiting for their orders. PO Britch and PO Hughes approached § 87(2)(b) and asked him to step aside so they could speak to him and get him out of the way of traffic. § 87(2)(b) appeared highly intoxicated, as indicated by his agitation. § 87(2)(b) refused to leave the drive thru window, so the officers asked him again. § 87(2)(b) again refused and grabbed onto the window. PO Britch and PO Hughes then grabbed § 87(2)(b) who resisted by tensing his body. PO Britch took § 87(2)(b) to the ground and handcuffed him in order to regain control. PO Hughes only touched § 87(2)(b) when they initially tried to put handcuffs on him, but PO Britch took him to the ground on his own. PO Britch then spoke with the McDonald's employees who told him and PO Hughes that they had asked § 87(2)(b) to leave several times but he had not. § 87(2)(b) was transported to the 114th Precinct stationhouse for arrest processing. He was agitated and yelling for the entire car ride to the stationhouse. § 87(2)(b) then passed out while being escorted toward the back entrance to the stationhouse and was removed to the hospital in an ambulance.

PO Hughes' body worn camera footage (**Board Review 01**) from the incident was generally consistent with PO Britch's statement. The video opens with PO Hughes and PO Britch arriving at the McDonalds. PO Hughes approaches the drive thru window at 01:08, where PO Britch is already speaking to § 87(2)(b). They tell § 87(2)(b) he must move out of the driveway, and he responds, "They need to refund me." The officers again tell him to move and § 87(2)(b) responds, "You can't tell me to move unless they refund me...that's gonna be a fucking federal violation." At 1:39 the officers grab § 87(2)(b) and pull him away from the drive through window, to which § 87(2)(b) responds, "You can't touch me!" There is a brief tussle as the officers attempt to put handcuffs on § 87(2)(b). PO Hughes grabs his right wrist and begins to put it behind his back. He tells § 87(2)(b) to stop resisting. § 87(2)(b) repeatedly states, "You guys are so fucked! I can't wait for this shit!" PO Hughes gets § 87(2)(b)'s hands behind his back and locks his cuffs, and § 87(2)(b) responds, "What are you doing?" The officer responds, "Putting on cuffs." § 87(2)(b) asks, "For what?" and then screams "For fucking what?!" At 2:33 PO Britch and PO Hughes bring § 87(2)(b) to the ground with his left cheek on the pavement.

At 7:55, PO Hughes then returns to the window and the women working at the drive through

window explain to PO Hughes that they asked § 87(2)(b) to leave but he began to yell and swear at them. At 10:17 Sgt. Dyer, PO Britch, and PO Hughes tell § 87(2)(b) to stop resisting arrest. PO Britch explains to § 87(2)(b) that he is under arrest for § 87(2)(b). At 11:54 they put § 87(2)(b) in the back of their police vehicle.

PO Britch's BWC footage was generally consistent with PO Hughes' (**Board Review 03**).

The first Medical Treatment of Prisoner form for § 87(2)(b) (**Board Review 13**) was filed by PO Britch and approved by Lieutenant Thomas Jacobs of the 114th Precinct. It states that § 87(2)(b) was "highly intoxicated [and] removed to hospital for evaluation." The second Medical Treatment of Prisoner Form (**Board Review 19**) states that § 87(2)(b) was taken to the hospital the second time because he was "complaining of headaches, history of six concussions, feeling dizzy, pain to back of head and left shoulder."

TRI § 87(2)(b) filled out by PO Britch for this incident (**Board Review 14**) states that there was force used, and the reason for the force used was to "overcome resistance or aggression." The report notes that § 87(2)(b) sustained an abrasion to his left shoulder and complained of headaches and pain. Lieutenant Jacobs' Supervisor's Assessment Report (**Board Review 15**) was generally consistent with PO Britch's statement that § 87(2)(b) refused to move from the drive thru window and was taken to the ground when he resisted handcuffing.

It was undisputed that PO Britch and PO Hughes used force to physically restrain and remove § 87(2)(b) from the McDonald's drive through after multiple instructions to leave.

According to NY CLS Penal Law Code 140.05, "a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises." NY CLS Penal § 140.05. (**Board Review 16**).

Patrol Guide Procedure 221-01 (**Board Review 17**) states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application of force must be reasonable under the circumstances. In determining whether the use of force is reasonable members of service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS
- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Discourtesy: At the 114th Precinct stationhouse in Queens, Lieutenant Thomas Jacobs spoke discourteously to § 87(2)(b)

Allegation (D) Abuse of Authority: At the 114th Precinct stationhouse in Queens, Lieutenant Thomas Jacobs refused to provide his name to § 87(2)(b)

In his interview, § 87(2)(b) stated that after he was discharged from the hospital the first time, he was brought back to the 114th Stationhouse and brought into a cell. § 87(2)(b) started to feel light-headed because he had hit his head and he thought he might have been concussed. He was also bleeding from his shoulder. § 87(2)(b) called out that he needed medical care. Lieutenant Jacobs came into the room to § 87(2)(b)'s cell and § 87(2)(b) explained to him that he wanted medical attention. Lieutenant Jacobs told him to "Shut the fuck up and just get booked." He told § 87(2)(b) that he was not injured and that he had not gotten a concussion. § 87(2)(b) was unsure of what changed, but approximately 45 minutes to an hour later EMS arrived at the stationhouse. As he was being taken into the ambulance, § 87(2)(b) asked Lieutenant Jacobs for his name, and Lieutenant Jacobs did not respond to him. § 87(2)(b) was then transported by ambulance to § 87(2)(b) in Queens.

Lieutenant Jacobs (**Board Review 18**) said that around 9:30 a.m., he was sitting at the ICO desk in the 114th Precinct stationhouse, which is close to the room with the Prisoner Holding Cell. He heard § 87(2)(b) making noise in the cell, so he went to go check on him. He couldn't remember exactly what § 87(2)(b) was saying, but he heard shouting. He could not discern him saying anything specifically before he went into the cell. Lieutenant Jacobs then went into the cell and § 87(2)(b) informed him that he suffered from a history of concussions, and his head was hurting him. Lieutenant Jacobs left and instructed the desk sergeant to call an ambulance. Lieutenant Jacobs also noticed a strong smell of alcohol on his person, and that § 87(2)(b) appeared to be hungover. § 87(2)(b) was very argumentative, seemed agitated, and told Lieutenant Jacobs that he was going to sue the city. An ambulance arrived a little after 10:00 a.m. and took § 87(2)(b) to § 87(2)(b) around 10:26 a.m. Lieutenant Jacobs did not remember whether § 87(2)(b) ever specifically asked for his name, but stated that, had he asked, he would have provided it. Lieutenant Jacobs denied saying "Just shut the fuck up and get booked" to § 87(2)(b).

PO Britch stated that he did not remember hearing or seeing Lieutenant Jacobs interacting with anyone in the holding cell area.

The investigation received security footage from the 114th Precinct Stationhouse Holding Cell Area (**Board Review 08**). This video had no sound. At 3:09:10, Lieutenant Jacobs enters the room in a green sweatshirt and red baseball cap. He appears to take photos on a cell phone of § 87(2)(b)'s arms and shoulder. He leaves for a moment and then returns, and he and § 87(2)(b) have a short conversation through the cell. The conversation appears to be contentious, with Lieutenant Jacobs using lots of hand movement and § 87(2)(b) making frustrated faces and returning to his seat in the cell.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (**Board Review 21**)
- Police Officer Edward Britch has been a member of service for eight years and has been subject to three CCRB complaints and 12 allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Brian Hughes has been a member of service for six years and has been subject to two CCRB complaints and 10 allegations, none of which have been substantiated. § 87(2)(g)
- Lieutenant Thomas Jacobs has been a member of service for 20 years and has been subject to six CCRB complaints and 15 allegations, none of which have been substantiated.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming false arrest and excessive force. (**Board Review 22**) There is no 50H hearing scheduled.

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator: Michael Zajakowski Uhl Inv. Uhl 11/9/2020
Signature Print Title & Name Date

Squad Leader: Eric Rigie IM Eric Rigie 12/30/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date